Appendix

Revenue act of 1918, c. 18, 40 Stat. 1057, 1105:

SEC. 600(a) That there shall be levied and collected on all distilled spirits now in bond or that have been or that may be hereafter produced in or imported into the United States, . . . a tax of $2.20 . . . on each proof gallon . . . to be paid by the distiller or importer when withdrawn, and collected under the provisions of existing law.

Revenue act of 1926, c. 27, 44 Stat. 104:

SEC. 900. Subdivision (a) of section 600 of the revenue act of 1918, as amended, is amended to read as follows:

(Thereafter the terms of section 600, supra, were repeated, with the exception of the rate of tax. As to the rate it was said:)

(3) On and after January 1, 1928, $1.10 on each proof gallon . . .

Liquor taxing act of 1934, c. 1, 48 Stat. 313, effective January 12, 1934:

SEC. 2. Paragraphs (3) and (4) of subdivision (a) of section 600 of the revenue act of 1918, as amended (relating to the tax on distilled spirits generally and the tax on distilled spirits diverted for beverage purposes (U.S.C., Sup. VI, title 26, sec. 1150 (a) (1) and (2)) are amended to read as follows:

(3) . . .

(4) On and after the effective date of Title I of the liquor taxing act of 1934, $2 on each proof gallon. . . .

Revenue act of 1938, c. 289, 52 Stat. 447, 572, effective July 1, 1938:

SEC. 710. Tax on Distilled Spirits.

(a) Section 600 (a) (4) of the Revenue Act of 1918, as amended, is amended to read as follows:

> "(4) On and after January 12, 1934, and until July 1, 1938, $2.00, and on and after July 1, 1938, $2.25, on each proof gallon or wine gallon when below proof and a proportionate tax at a like rate on all fractional parts of such proof or wine gallon."

(b) Section 600 (c) of such Act, as amended, is amended by striking out "$2.00 per wine gallon" and inserting in lieu thereof "$2.25 per wine gallon."

(c) Section 4 of the Liquor Taxing Act of 1934 is amended by striking out "$2.00" and inserting in lieu thereof "$2.25."

(d) The amendment made by this section shall not apply to brandy and the rates of tax applicable to such brandy shall be the rates applicable without regard to such amendments.

Act of June 12, 1934, c. 474, 48 Stat. 943, amending the tariff act of 1930 by adding the following provision:

PART III. Promotion of Foreign Trade

SEC. 350(a) For the purpose of expanding foreign markets for the products of the United States . . . the President, whenever he finds as a fact that any existing duties or other import restrictions of the United States or any foreign country are unduly burdening and restricting the foreign trade of the United States and that the purpose

above declared will be promoted by the means hereinafter specified, is authorized from time to time—

(1) To enter into foreign trade agreements with foreign governments or instrumentalities thereof; and

(2) To proclaim such modifications of existing duties and other import restrictions, or such additional import restrictions, or such continuance, and for such minimum periods, of existing customs or excise treatment of any article covered by foreign trade agreements, as are required or appropriate to carry out any foreign trade agreement that the President has entered into hereunder. . . . The proclaimed duties and other import restrictions shall apply to articles the growth, produce, or manufacture of all foreign countries, whether imported directly, or indirectly: . . . The President may at any time terminate any such proclamation in whole or in part.

(b) Nothing in this section shall be construed to prevent the application, with respect to rates of duty established under this section pursuant to agreements with countries other than Cuba, of the provisions of the treaty of commercial reciprocity concluded between the United States and the Republic of Cuba on December 11, 1902, or to preclude giving effect to an exclusive agreement with Cuba concluded under this section, modifying the existing preferential customs treatment of any article the growth, produce, or manufacture of Cuba: Provided, That the duties payable on such an article shall in no case be increased or decreased by more than 50 percentum of the duties now payable thereon.

(c) As used in this section, the term "duties and other import restrictions" includes (1) rate and form of import

duties and classification of articles, and (2) limitations, prohibitions, charges, and exactions other than duties, imposed on importation or imposed for the regulation of imports.

Cuban trade agreement of 1934, effective September 3, 1934, 49 Stat. 3559, 3564, 3644, T.D. 47232:

A PROCLAMATION

WHEREAS, I, Franklin D. Roosevelt, President of the United States of America, have, on August 24, 1934, pursuant to and in accordance with the provisions of the Act of Congress, approved June 12, 1934, entitled "An Act to Amend the Tariff Act of 1930," entered into a trade agreement, with two attached Schedules, with the President of the Republic of Cuba, which Agreement and Schedules in the English and Spanish languages are in words and figures as follows:

The President of the United States of America and the President of the Republic of Cuba, desirous of strengthening the traditional bonds of friendship and commerce between their respective countries by maintaining as the basis for their commercial relations the granting of reciprocal *preferential* treatment, in continuation of the policy adopted in the Convention of Commercial Reciprocity of 1902 between the two countries, and taking into consideration that changed conditions have rendered it necessary to modify the provisions of that Convention, have arrived at the following Agreement:

* * * * * * *

Article VIII

All articles the growth, produce, or manufacture of the United States of America or the Republic of Cuba, shall, after importation into the territory of the other country, be exempt from national or federal internal taxes, fees, charges, or exactions, other or higher than those payable on like articles of national or any other foreign origin.

All articles enumerated and described in Schedule I annexed to this Agreement, with respect to which a rate of duty is specified in Column 2 of the said Schedule, shall be exempt from all taxes, fees, charges, or exactions, in excess of those imposed or required to be imposed by laws of the Republic of Cuba in effect on the day on which this Agreement comes into force; *and all articles enumerated and described in Schedule II annexed to this Agreement, with respect to which a rate of duty is specified in Column 2 of the said Schedule, shall be exempt from all taxes, fees, charges, or exactions, in excess of those imposed or required to be imposed by laws of the United States of America in effect on the day on which this Agreement comes into force.*

The provisions of this Article insofar as they apply to taxes, fees, charges, or exactions imposed within the United States of America, shall apply only to such taxes, fees, charges, or exactions as are subject to statutory control by the Federal Government of the United States of America.

* * * * * * *

SCHEDULE II

Tariff act of 1930 paragraph	Description of articles	Column 1 Minimum preferential reduction to Cuba	Column 2 Maximum rates of duty. Specific rates in United States dollars
802	Rum, in bottles containing each one gallon or less	20%	2.50 per proof gallon

Supplementary Cuban trade agreement of December 18, 1939, 54 Stat. 1997, 2006-2008, T.D. 50050:

A PROCLAMATION

WHEREAS it is provided in the Tariff Act of 1930 of the Congress of the United States of America, as amended by the Act of June 12, 1934, entitled "An Act To Amend the Tariff Act of 1930" (48 Stat. 943), which amending Act was extended by Joint Resolution of Congress, approved March 1, 1937 (50 Stat. 24), as follows:

* * * * * * *

WHEREAS, pursuant to the said Tariff Act of 1930, as amended, an exclusive and preferential Trade Agreement was entered into between the United States of America and the Republic of Cuba on August 24, 1934, which Agreement I did make public by my proclamation of August 24, 1934, and which Agreement is now in force between the two countries;

WHEREAS I, Franklin D. Roosevelt, President of the United States of America, *have found as a fact that certain existing duties and other import restrictions of the United States of America and the Republic of Cuba are*

unduly burdening and restricting the foreign trade of the United States of America and that the purpose declared in the said Tariff Act of 1930, as amended by the said Act of June 12, 1934, as extended by the said Joint Resolution of Congress, approved March 1, 1937, will be promoted by a trade agreement to supplement and amend the exclusive and preferential Trade Agreement entered into between the United States of America and the Republic of Cuba on August 24, 1934;

* * * * * * *

The President of the United States of America and the President of the Republic of Cuba, being desirous of strengthening still further the traditional bonds of friendship and commerce between their respective countries by maintaining the basis of reciprocal preferential treatment in their commercial relations, *and of making certain changes* in the provisions of the trade agreement between the United States of America and the Republic of Cuba signed at Washington on August 24, 1934, have resolved to conclude a supplementary agreement for that purpose and have, through their respective Plenipotentiaries, agreed on the following Articles:

* * * * * * *

ARTICLE III

Article VIII of the Agreement of August 24, 1934, is amended to read as follows:

Articles the growth, produce or manufacture of the United States of America or the Republic of Cuba shall, after importation into the other country, be exempt from all internal taxes, fees, charges or exactions other or higher than those payable on like articles of national or

any other foreign origin, subject, in the case of the United States of America, to the constitutional limitations on the authority of the Federal Government.

* * * * * * *

Articles the growth, produce or manufacture of the Republic of Cuba enumerated and described in Schedule II annexed to this Agreement shall, on their importation into the United States of America, be exempt from all duties other than ordinary customs duties and all taxes, fees, charges or exactions, imposed on or in connection with importation, in excess of those imposed on September 3, 1934, or required to be imposed thereafter by laws of the United States of America in force on September 3, 1934.

* * * * * * *

The provisions of Article I and Article III of this Agreement and of the third paragraph of this Article *shall not prevent the Government of the United States of America from imposing at any time on the importation of any article a charge equivalent to an internal tax imposed in respect of a like domestic article or* in respect of a commodity from which the imported article has been manufactured or produced in whole or in part.

Supplementary Cuban trade agreement of December 23, 1941, 55 Stat. 1449, 1468, T.D. 50541:

ARTICLE IV

1. The second paragraph of Article VIII of the Agreement of August 24, 1934, as amended, is amended to read as follows:

Articles the growth, produce or manufacture *of the United States* of America enumerated and described in Schedule I annexed to this Agreement, with respect to which a rate of duty is specified in the said Schedule, shall, *on their importation into the Republic of Cuba,* be exempt from all other duties, taxes, fees, charges or exactions, imposed on or in connection with importation, in excess of those imposed on September 3, 1934, or required to be imposed thereafter by laws of the Republic of Cuba in force on September 3, 1934.

2. The fourth paragraph of Article VIII of the Agreement of August 24, 1934, as amended, is hereby deleted.

3. The last paragraph of Article VIII of the Agreement of August 24, 1934, as amended, is amended to read as follows:

The provisions of this Agreement shall not prevent the Government of *either country* from imposing at any time on the importation of any article a charge equivalent to an internal tax imposed in respect of a like domestic article or in respect of a commodity from which the imported article has been manufactured or produced in whole or in part.

In the Supreme Court of the United States

OCTOBER TERM, 1943

RATHJEN BROTHERS, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

This case presents the same question as that in *Schenley Import Corporation* v. *United States*, No. 405, Present Term, in which certiorari was denied on November 8, 1943. The two cases were decided on the same day by the Court of Customs and Patent Appeals, and the decision in the instant case was made the basis for the decision in the *Schenley* case (Schenley, 79 Treas. Dec. Advance Sheets, August 19, 1943, p. 39; present case, *ibid.*, p. 35 (9 U. S. Cust. Ct. 50)). No additional reasons of substance have been advanced in the petition in this case for review.[1]

[1] In reliance upon the rule of construction that an amendatory act which merely repeats the provisions of an earlier statute is not to be construed as repealing by implication an

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For the reasons stated in the Government's brief in opposition in the *Schenley* case, it is respectfully submitted that the petition for a writ of certiorari in the instant case should be denied.

CHARLES FAHY,
Solicitor General.

PAUL P. RAO,
Assistant Attorney General.

JOHN R. BENNEY,
Attorney.

CHARLES J. MIVILLE,
Special Attorney.

NOVEMBER 1943.

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intermediate one which deals with some specific phase of the subject matter, particularly where such a construction would disturb vested rights, petitioner contends here, for the first time in this case, that there is no real conflict between Section 710 of the Revenue Act of 1938 and Article VIII of the Cuban Trade Agreement of 1934; that the 1938 Act should be interpreted as increasing the tax as to all imported distilled spirits except those covered by the Cuban agreement (Pet. 3–4, 19–27). This contention is without merit since, as is pointed out in the Government's brief in opposition in the *Schenley* case (pp. 6–7), the intention of Congress by the 1938 Act to increase the tax on distilled spirits despite conflicting provisions in international obligations is reflected from the fact that in the same Act it expressly saved international obligations when it desired to do so in connection with internal revenue taxes on imported lumber. And, of course, petitioner had no vested right to the maintenance of an existing rate of tax. *Norwegian Nitrogen Co.* v. *United States*, 288 U. S. 294, 318; *United States* v. *Bush*, 310 U. S. 371, 379.

U. S. GOVERNMENT PRINTING OFFICE: 1943

End